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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 United States of America,

No. CR-14-01520-13-PHX-NVW

10 Plaintiff,

ORDER

11 vs.

12 Javier Rivera-Vega,

13 Defendant.
14

15 Before the Court is Defendant Javier Rivera-Vega's Motion to Suppress and
16 Request for *Franks* Hearing (Doc. 126).

17 **I. LEGAL STANDARD**

18 Under *Franks v. Delaware*,

19 There is, of course, a presumption of validity with respect to the affidavit
20 supporting the search warrant. To mandate an evidentiary hearing, the
21 challenger's attack must be more than conclusory and must be supported by
22 more than a mere desire to cross-examine. There must be allegations of
23 deliberate falsehood or of reckless disregard for the truth, and those
24 allegations must be accompanied by an offer of proof. They should point
25 out specifically the portion of the warrant affidavit that is claimed to be
26 false; and they should be accompanied by a statement of supporting
27 reasons. Affidavits or sworn or otherwise reliable statements of witnesses
28 should be furnished, or their absence satisfactorily explained. Allegations
of negligence or innocent mistake are insufficient. . . . Finally, if these
requirements are met, and if, when material that is the subject of the alleged
falsity or reckless disregard is set to one side, there remains sufficient
content in the warrant affidavit to support a finding of probable cause, no

1 hearing is required. On the other hand, if the remaining content is
2 insufficient, the defendant is entitled, under the Fourth and Fourteenth
3 Amendments, to his hearing. Whether he will prevail at that hearing is, of
course, another issue.

4 438 U.S. 154, 171-72 (1978) (footnote omitted). “A defendant is entitled to an
5 evidentiary hearing if he ‘makes a substantial preliminary showing that a false statement
6 knowingly and intentionally, or with reckless disregard for the truth, was included by the
7 affiant in the warrant affidavit, and if the allegedly false statement is necessary to the
8 finding of probable cause.” *United States v. Craighead*, 539 F.3d 1073, 1080 (quoting
9 *Franks*, 438 U.S. at 155-56). “To justify a hearing, a defendant must make specific
10 allegations, allege a deliberate falsehood or reckless disregard for the truth, and
11 accompany such a claim with a detailed offer of proof.” *Id.*

12 **II. FACTS**

13 Defendant Javier Rivera-Vega was arrested when federal law enforcement officers
14 served a search warrant on November 24, 2014, at the rented residence of Defendant and
15 his wife, co-defendant Maricela Aceves, located at 2928 North 69th Drive, Phoenix,
16 Arizona. The warrant was issued upon the application of John W. Perez, a Special Agent
17 with Immigration and Customs Enforcement, supported by his 30-page Affidavit. The
18 Affidavit erroneously stated that Defendant “has a 1998 marijuana smuggling conviction”
19 when Defendant had been convicted of marijuana possession, not smuggling.

20 The Affidavit included a probable cause section with 34 paragraphs of information
21 regarding both Defendant and his co-defendant wife, Maricela Aceves. The Affidavit
22 described evidence that Aceves had acquired five properties, each valued about \$100,000,
23 free and clear of any liens, and eleven vehicles, despite minimal reported earnings for
24 Aceves and no earnings for Defendant. It explained the basis for concluding that
25 Defendant and Aceves resided full-time at the rental property and conducted marijuana
26 smuggling activities at Aceves-owned properties occupied by others for the purpose of
27 protecting the properties from government seizure and forfeiture. It further explained the
28 basis for believing that records related to the Aceves-owned properties and marijuana

1 smuggling activities would be found at the search location where Defendant and Aceves
2 resided.

3 Among other things, the Affidavit included details about five properties owned by
4 Aceves, surveillance indicating that Defendant and Aceves reside at the rented search
5 location, surveillance of eleven vehicles registered to Aceves, recitation of a drug seizure
6 at one of the Aceves-owned properties, that vans associated with previously seized loads
7 of marijuana had previously been observed at the search location, that a previously court-
8 authorized search conducted on another Aceves-owned property after one of the vans
9 under surveillance had been there revealed that the house contained marijuana residue
10 and related items, surveillance of Defendant and his contact with one of the vans, and that
11 a van identified by a co-defendant as one previously loaded with marijuana had been
12 parked at the search location on numerous occasions. Further, the Affidavit stated that
13 Defendant drove a vehicle that was observed at the search location and at one of the
14 Aceves-owned properties and that the vehicle was observed running security or
15 surveillance routes for other vans later seized and found to contain controlled substances.
16 The Affidavit also provided information indicating that Defendant was the man identified
17 as “Javier” and perceived to be the boss by an individual hired to pick up a load of
18 marijuana.

19 **III. ANALYSIS**

20 First, to justify an evidentiary hearing, Defendant must make a detailed offer of
21 proof of a deliberate falsehood or reckless disregard for the truth. Defendant contends
22 that the Court may infer that the Affidavit’s reference to a 1998 marijuana “smuggling”
23 conviction instead of a 1998 marijuana “possession” conviction was made recklessly,
24 knowingly, or intentionally because the error was made after a year-long investigation.
25 That is not a detailed offer of proof.


26 Second, Defendant must show that the false statement is necessary to the finding
27 of probable cause. The Affidavit provided 34 paragraphs of information about
28 Defendant, his wife, the search location (their residence), properties owned by his wife,

1 vehicles registered to his wife, and vans associated with marijuana seizures, Defendant,
2 the search location, and properties owned by his wife. The erroneous statement about
3 Defendant's 1998 conviction is not necessary to the finding of probable cause.

4 Finally, Defendant contends that the erroneous statement made all of the other
5 information about Defendant and his wife appear much more suspicious than it otherwise
6 would. It did not. The Affidavit states that vans associated with previously seized loads
7 of marijuana were observed at the search location, Defendant was observed driving an
8 involved vehicle, and drugs had been seized at one of Defendant's wife's properties.
9 Such facts are not made more suspicious by describing Defendant's 1998 conviction as
10 for marijuana smuggling rather than marijuana possession.

11 IT IS THEREFORE ORDERED that Defendant Javier Rivera-Vega's Motion to
12 Suppress and Request for *Franks* Hearing (Doc. 126) is denied.

13 Dated this 7th day of October, 2015.

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16 Neil V. Wake
17 United States District Judge
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